IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR
&
THE HONOURABLE MR. JUSTICE K.M.JOSEPH

FRIDAY, THE 4TH AUGUST 2006 / 13TH SRAVANA 1928

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TA.58/2005 of S.T.A.TRIBUNAL,ADDL.BENCH,PALAKKAD
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REVISION PETITIONER/ASSESSEE/APPELLANT:

P. NARENDRA MENON,
RUBICON LEATHER INDUSTRIES,
PATTAMBI ROAD, CHERPULASSERY.

BY ADV. SMT.S.K.DEVI
SRI.SANTHOSH P.ABRAHAM

RESPONDENTS: REVENUE/RESPONDENT:

STATE OF KERALA,
REPRESENTED BY ITS FINANCE SECRETARY,
SECRETARIAT, TRIVANDRUM.

BY GOVT. PLEADER SRI. V.V. ASOKAN.
GOVT. PLEADER SRI. GEORGEKUTTY MATHEW.

THIS SALES TAX REVISION HAVING BEEN FINALLY HEARD ON 04/08/2006, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

C.N.RAMACHANDRAN NAIR & K.M.JOSEPH, JJ.

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concessional rate of tax at 5% on the sale of goods other than petroleum products coming under Entry 108 of the First Schedule to the Act to industrial units including public sector undertakings for use in manufacture or processing of goods by them or on job work basis within the State. What is clear from this notification is that eligibility for concessional rate is available only when the item sold is used in manufacture or processing goods either by the industry in their own account or on behalf of others on job work basis within the State. In the first place we are constrained to observe that consumption of item sold in manufacture is not a requirement of the notification and it is only a meaning assigned to it by the Tribunal. Goods consumed in manufacture, such as industrial raw materials, components, packing materials etc., will also qualify for concessional rate. However, the question to be considered is whether "use in manufacture" should be limited to "consumption" in manufacture. To our mind such a restricted meaning should not be given to the notification, because the Government while granting benefit has not restricted use of the item purchased to consumption in manufacture. Further the benefit of

concessional rate for industrial units for purchase of industrial raw materials, components, packing materials etc., are otherwise available under Section 5(3) of the KGST Act and when the Government issues notification providing for concessional rate of tax, it must be assumed that the Government is well aware of the concession otherwise available to the dealers under the Act and whatever is given through the notification is over and above what is provided under the Statute. Therefore the notification should be assigned a meaning to make it meaningful and to supplement to the statute and not to limit it's application to already available benefits under the Act making the notification unnecessary or redundant.

2. Even though the Government Pleader referred to the definition of the term `manufacture' contained in the main body of the notification and contended that the purchasing industry should use the item in the manufacture, we are unable to accept this contention because this definition only explains as to what is the activity that qualifies a purchaser to avail the concessional rate. However, what are the materials, tools and equipments required for manufacture is a matter

which depends on the industry. While manufacture of goods in the industry is a mandatory condition for eligibility under the notification to purchase goods at concessional rates, there is nothing to indicate that for availing concessional rate the items purchased should be consumed in manufacture limiting concessional rate to industrial raw materials alone. Even though the form prescribed under the notification to be issued by the purchaser demands a co-relation between the item purchased and the item manufactured, there again, we do not find that the declaration by the purchaser is to the effect that the item purchased is consumed in manufacture. Therefore we are of the view that the restrictive meaning assigned to the notification by the Tribunal is incorrect. Counsel for the petitioner relied on the decision reported in **Phelps & Co. (P) Ltd. v. Member, Board of Revenue** ((1967) XX STC 511), wherein the Calcutta High Court has held that industrial gloves used by workmen of a manufacturing company are used in manufacture itself. Anyone can visualise the nature and use of industrial gloves by workers and technicians in a manufacturing industry. In this case, in a sensitive industry like Refinery, the use of

industrial gloves is absolutely essential to protect the workmen from the danger of electric shock, heat etc. It is to be noted that in the declaration furnished by the purchaser, which is a registered dealer under the Act, there is an undertaking to pay differential tax if the item purchased is not used for the purposes declared. We are of the view that it is not only failure of use of the item for the declared purpose, but even a mis-declaration with regard to eligibility for concessional rate entitles the department to proceed against the purchaser to collect differential tax and interest thereon and in cases of deliberate violation, even to levy penalty. Department has no case that Cochin Refineries Limited has issued any mis-declaration or failed to use the goods purchased for the declared purpose because Department has not taken any proceedings against them.

In view of the above findings, Sales Tax Revision Case is allowed vacating the order of the Tribunal and confirming the first appellate order directing the officer to revise the assessment and grant concessional rate to the petitioner, for, the turn over covered by the

declaration issued by Cochin Refineries Limited.

(C.N.RAMACHANDRAN NAIR, JUDGE)

sb. (K.M. JOSEPH, JUDGE)

K.S.RADHAKRISHNAN & K.M.JOSEPH, JJ.

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